

No. 1945

UNITED STATES CIRCUIT COURT OF APPEAL

FOR THE NINTH CIRCUIT.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corporation),
Plaintiff in Error,

vs.

ALICE M. GILLILAND,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit Court for the Southern District of California,
Southern Division.

FILED

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Plaintiff in Error,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

E. W. CAMP, Esq.,

Kerckhoff Building, Los Angeles, California,

A. H. VAN COTT, Esq.,

Kerckhoff Building, Los Angeles, California.

For Defendant in Error:

Messrs. W. O. MORTON, and

HARRY A. HOLLZER,

500 Germain Building, Los Angeles, California.

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit in and for the Southern District of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court before you, between the Atchison, Topeka and Santa Fe Railway Company, plaintiff in error, and Alice M. Gilliland, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, the Atchison, Topeka and Santa Fe Railway Company, as by its

complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 20th day of January next, in the Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 22d day of December, in the year of our Lord one thousand nine hundred and ten and of the Independence of the United States the one hundred and thirty-fifth.

[Seal] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
Judge.

I hereby certify that a copy of the within writ of error was on the 22d day of December, 1910, lodged

in the clerk's office of the said United States Circuit Court for the Southern District of California, Southern Division for the said Defendant in Error.

[Seal] WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California.

By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: No. 1527. R. United States Circuit Court of Appeals for the Ninth Circuit. Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error, vs. Alice M. Gilliland, Defendant in Error. Writ of Error. Filed Dec. 22, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Citation (Original).]

UNITED STATES OF AMERICA,—ss.
To Alice M. Gilliland, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 20th day of January, A. D. 1911, pursuant to a writ of error on file in the Clerk's office of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, in that certain action Number 1527, wherein the Atchison, Topeka and Santa Fe Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and rendered against the said the

Atchison, Topeka and Santa Fe Railway Company, in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable OLIN WELLBORN, United States District Judge for the Southern District of California, and one of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit in and for the Southern District of California, this 22d day of December, A. D. 1910, and of the Independence of the United States, the one hundred and thirty-fifth.

OLIN WELLBORN,
U. S. District Judge, for the Southern District of
California.

Service of a copy of the within and foregoing citation is hereby admitted this 22d day of December, A. D. 1910.

W. O. MORTON and
HARRY A. HOLLZER,
Attorneys for Alice M. Gilliland.

[Endorsed]: Original. No. 1527. United States Circuit Court of Appeals for the Ninth Circuit. Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error, vs. Alice M. Gilliland, Defendant in Error. Citation. Filed Dec. 23, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[Answer of Judges to Writ of Error.]

The Answer of the Judges of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division:

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Circuit Court to the United States Circuit Court of Appeals for the Ninth Circuit, in a certain schedule to this writ annexed, as within we are commanded.

By the Court.

[Seal]

WM. M. VAN DYKE,
Clerk.

In the United States Circuit Court for the Southern District of California, Southern Division.

No. —— —LAW.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
ROAD COMPANY (a Corporation),

Defendant.

Complaint.

To the Honorable, the Judges of said Court:

Plaintiff above named complains of the defendant above named, and for cause of action against said defendant alleges:

I.

That at all the times in this complaint mentioned, the defendant above named was and still is a corporation organized and existing under and by virtue of the laws of the State of Kansas, and doing business in the County of Los Angeles, State of California.

II.

That at all the times in this complaint mentioned, said defendant was and still is engaged in business as a common carrier in the transportation of passengers and baggage for hire in cars propelled by steam power over certain railway lines and tracks by it owned and controlled, extending from the State of Kansas to and through said County of Los Angeles, State of California; and at all the times in this complaint mentioned, said defendant has operated and still operates its cars and locomotives upon its said railway lines and tracks.

III.

That on or about the 7th day of July, 1909, at Kansas City in said State of Kansas, for and in consideration of a certain sum of money theretofore paid by said plaintiff to said defendant, the said defendant received said plaintiff into one of its passenger cars drawn by a steam locomotive engine for the purpose of conveying said plaintiff in said car and upon its said railroad, as a passenger, from said Kansas City to said State of California.

IV.

That at the time said plaintiff was being conveyed by said defendant as aforesaid, the said railway lines and tracks of defendant were so unskillfully

and imperfectly built and the same were, and were by said defendant suffered to be, in such a defective and dangerous condition that the said tracks were loose and were liable to shift and spread apart and sink at any time, upon very slight pressure being exerted upon or against said tracks, and the same were buried in water from two to four feet in depth, and it was highly dangerous and extremely unsafe for any train to be operated upon or along or over said tracks of defendant or any part thereof.

V.

That at all the times in this complaint mentioned, said defendant knew each and all of the matters and things hereinbefore set forth.

VI.

That on or about said 7th day of July, 1909, while said plaintiff was being conveyed by said defendant as aforesaid, the said defendant so negligently and carelessly managed and operated the locomotive drawing the car in which plaintiff was riding as aforesaid, and by reason of the dangerous and unsafe condition of said defendant's tracks and by reason of the carelessness and negligence of the defendant in building its said tracks and railway lines as aforesaid and in suffering the same to be in such a defective and dangerous condition as aforesaid, the said tracks of defendant at a place near the town of Pomona, in said State of Kansas, sank and shifted and spread apart and caused the said car in which plaintiff was riding as aforesaid to be derailed and thrown off from the tracks and upon its side and burying said car in water, and thereby and by reason

of said carelessness and negligence of defendant, said plaintiff was suddenly and with great force and violence thrown out of the seat in said car wherein plaintiff was riding as aforesaid, and by reason of the water which then and there rushed into said car, said plaintiff was drenched and covered with water above her hips and plaintiff was hemmed and held in said position, covered with water as aforesaid, for nearly a quarter of an hour. That thereupon, plaintiff was assisted in getting out of said car through a window thereof, and by reason of the fact that said car was surrounded on all sides by water nearly four feet in depth and that the said car was filled inside thereof with water to a depth of nearly four feet, said plaintiff was obliged to and did remain drenched and wet and exposed to the elements upon the top of the side of said car from about the hour of three o'clock P. M. of said 7th day of July, 1909, continuously until about nine o'clock P. M. of said day.

VII.

That by reason of the premises and said carelessness and negligence of said defendant, said plaintiff was then and there severely and painfully bruised and contused all over her body, and rendered sick, sore and disabled and sustained a severe and serious nervous shock, and ever since her said injuries sustained as aforesaid, plaintiff has been and still is unable to sleep and has suffered and still suffers and will continue to suffer for at least two years to come, great physical pain and mental anguish and has become a helpless, nervous wreck; that by reason of

her said injuries so sustained as aforesaid, said plaintiff was obliged to be and was attended by a special trained nurse for a period of more than five weeks and was obliged to remain and did remain in the hospital for a period of two weeks and was obliged to and did undergo a serious and painful surgical operation in a hospital in the City of Los Angeles, County of Los Angeles, State of California.

VIII.

That prior to and up to receiving her said injuries as aforesaid, said plaintiff was a strong woman, in good health and in the full possession of all her faculties and was engaged in the profession of teaching school and had been regularly earning as a teacher the sum of One Hundred and Twenty-five (\$125) Dollars per month, and ever since her said injuries, and by reason of said carelessness and negligence of said defendant, said plaintiff has been unable and will continue for at least another year to be unable, to follow her occupation as a teacher or earn any money by any other occupation. That prior to and up to the time of receiving her said injuries as aforesaid, said plaintiff was obliged to depend upon her earnings as such teacher for her support and maintenance, and her said occupation as a teacher was and still is her only means of earning a livelihood.

IX.

That by reason of the premises and of the carelessness and negligence of the defendant as aforesaid, said plaintiff has been damaged in the sum of Fifteen Thousand (\$15,000) Dollars.

X.

That by reason of said injuries sustained by plaintiff through said carelessness and negligence of defendant as aforesaid, said plaintiff has been obliged to incur and has incurred a liability in the sum of Seven Hundred and Fifty (\$750) Dollars for medical attendance, nurse hire and hospital accommodations, and said plaintiff has thereby been further damaged in the additional sum of Seven Hundred and Fifty (\$750) Dollars.

Wherefore, plaintiff prays judgment against said defendant for the sum of Fifteen Thousand Seven Hundred and Fifty (\$15,750) Dollars, together with her costs of suit.

W. O. MORTON and
HARRY A. HOLLZER,
Attorneys for Plaintiff.

State of California,
County of Los Angeles,—ss.

Harry A. Hollzer, being duly sworn, says: That he is one of the attorneys for plaintiff in the foregoing entitled action; that he has read the foregoing complaint, on behalf of plaintiff, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true; that the said plaintiff is absent from the County of Los Angeles, State of California, and the facts are within the knowledge of this affiant, who is one of the attorneys for said plaintiff and therefore he makes this affidavit.

HARRY A. HOLLZER.

Subscribed and sworn to before me this 7th day of December, A. D. 1909.

[Seal]

O. E. SMITH,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original No. 1527. In the United States Circuit Court for the Southern District of California, Southern Division. No. ——. Law. Alice M. Gilliland, Plaintiff, vs. Atchison, Topeka and Santa Fe Railroad Company, a Corporation, Defendant. Complaint. Personal Injuries.

————— Received a copy of the within Complaint this —— day of December, 1909. ——————, Attorneys for Deft. Filed Dec. 7, 1909. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. W. O. Morton and Harry A. Hollzer, 500 Germain Building, Los Angeles, Cal.

[Summons.]

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,
Southern District of California, Southern Division.*

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
ROAD COMPANY (a Corporation),
Defendant.

Action brought in the said Circuit Court, and the Complaint filed in the office of the Clerk of said Cir-

cuit Court, in the City of Los Angeles, County of Los Angeles.

The President of the United States of America,
Greeting: To the Atchison, Topeka and Santa
Fe Railroad Company, a Corporation:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the Clerk of said Court, in the City of Los Angeles, County of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you.

The said action is brought to recover the sum of \$15,000.00 as damages for personal injuries alleged to have been sustained by reason of the carelessness and negligence of defendant. Plaintiff also prays judgment for \$500.00 for indebtedness incurred for medical attendance, nurse hire and hospital accommodations. Plaintiff also prays judgment for costs of suit; all of which more fully appears from the Complaint on file in this action to which you are hereby expressly referred, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the court for the relief demanded in the Complaint.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this seventh day of December, in the year of our Lord one thou-

sand nine hundred and nine, and of our Independence
the one hundred and thirty-fourth.

[Seal]

WM. M. VAN DYKE,
Clerk.By Chas. N. Williams,
Deputy Clerk.United States Marshal's Office,
Southern District of California.

I hereby certify, that I received the within writ
on the 8th day of Dec., 1909, and personally served
the same on the 8th day of Dec., 1909, by delivering
to and leaving with A. T. & S. F. Ry., E. W. Camp,
Designated Agent, said defendant named therein,
personally, at the County of Los Angeles, in said Dis-
trict, a certified copy thereof, together with a copy
of the Complaint, certified by Wm. M. Van Dyke
attached thereto.

Los Angeles, Dec. 8, 1908.

LOS V. YOUNGWORTH,
U. S. Marshal.
By J. F. Durlin,
Deputy.

[Endorsed]: Original. Marshal's Doc. No. 1427.
No. 1527. U. S. Circuit Court, Ninth Circuit, South-
ern District of California, Southern Division. Alice
M. Gilliland vs. Atchison, Topeka & Santa Fe Rail-
road Company, a Corporation. Summons. W. O.
Morton, Harry A. Hollzer, Plaintiff's Attorney.
Filed Dec. 8, 1909. Wm. M. Van Dyke, Clerk. Chas.
N. Williams, Deputy.

[Answer.]

In the United States Circuit Court for the Southern District of California, Southern Division.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
ROAD COMPANY (a Corporation),
Defendant.

Comes now the defendant, The Atchison, Topeka and Santa Fe Railway Company, a Corporation, and answering the complaint of the plaintiff herein, shows to the Court:

I.

Upon information and belief denies the allegations contained in paragraph VII of said complaint that plaintiff was then and there, or at any time or place, severely or painfully or otherwise bruised, or contused all over her body, or in any part of her body, or rendered sick or sore or disabled; and denies that plaintiff sustained a severe or serious or any nervous shock; and denies that ever since any injuries sustained as aforesaid, or at all, as a consequence of the accident set forth in the complaint, plaintiff has been or is unable to sleep or has suffered or still suffers or will continue to suffer for at least two years to come, or for any period of time, great or other physical pain or mental anguish; and denies that plaintiff has become a helpless or other nervous wreck; and denies that by reason of the injuries al-

leged by her in her complaint to have been sustained, or any injuries sustained in any manner by reason of said accident, said plaintiff was obliged to be or was attended by any nurse for a period of more than five weeks, or any period, or was obliged to or did remain in any hospital for a period of two weeks or any period of time, or was obliged to or did undergo a serious or painful surgical operation in a hospital in the City of Los Angeles, County of Los Angeles, State of California, or in any hospital.

II.

Denies upon information and belief that prior to or up to receiving her said alleged injuries, plaintiff was a strong woman or in good health or in the full possession of all her faculties.

III.

The defendant has no information or belief upon the subject sufficient to enable it to answer the allegations contained in paragraph VIII of said complaint that prior to and up to receiving her said injuries plaintiff was engaged in the profession of teaching school and had been regularly earning as a teacher the sum of \$125 per month; and basing its denial thereon denies the said allegations.

Defendant further denies, upon information and belief, that ever since her said alleged injuries or by reason of said carelessness or negligence of said defendant, or any carelessness or negligence of said defendant, said plaintiff has been unable, or will continue for at least another year, or any period of time, to be unable to follow her occupation as a teacher, or earn any money by any other occupation.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allegations contained in said paragraph VIII of the complaint that prior to and up to the time of receiving her said injuries as aforesaid, the said plaintiff was obliged to depend upon her earnings as such teacher for her support and maintenance, and her said occupation as a teacher was and still is her only means of earning a livelihood; and basing its denial thereon it denies each and every of said allegations.

IV.

Denies that by reason of the premises, or of the carelessness or negligence of the defendant as alleged in said complaint, or of any negligence or carelessness of this defendant, the plaintiff has been damaged in the sum of \$15,000, or any sum whatever.

Defendant further denies that by reason of any injuries alleged in said complaint to have been sustained by plaintiff through the alleged carelessness or negligence of the defendant, or by reason of any negligence or carelessness of the defendant, the said plaintiff has been obliged to incur or has incurred a liability in the sum of \$500 or any sum for medical attendance or nurse hire or hospital accommodations, or has been further damaged in the additional sum of \$500, or any sum.

Wherefore defendant prays judgment that the plaintiff take nothing by her action, and that the defendant have its costs of said action.

E. W. CAMP,
U. T. CLOTFELTER,
M. W. REED, and
A. H. VAN COTT,
Attorneys for Defendant.

State of California,
County of Los Angeles,—ss.

A. G. Wells, being by me first duly sworn, says that he is an officer, namely, the General Manager of the defendant named in the foregoing Answer; that he has read said Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

A. G. WELLS.

Subscribed and sworn to before me this 28th day of December, A. D. 1909.

[Seal] J. L. B. HAMILTON,
Notary Public in and for Los Angeles County, California.

[Endorsed]: No. 1527. U. S. Circuit Court, Southern District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. A. T. & S. F. Ry., Defendant. Answer. Filed Dec. 30, 1909. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Received copy of the within Answer this 28th day of December, 1909. W. O. Morton & Harry A. Hollzer,

Attorneys for Plaintiff. E. W. Camp, U. T. Clotfelter, M. W. Reed, A. H. Van Cott, Attorneys for Defendant.

In the United States Circuit Court for the Southern District of California, Southern Division.

No. 1527—LAW.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-ROAD COMPANY (a Corporation),
Defendant.

Amendment to Complaint.

To the Honorable, The Judges of the Above-entitled Court:

Plaintiff above named, by leave of the Court first had and obtained, files this as an Amendment to her complaint on file herein, and for Amendment thereto substitutes the following in lieu of paragraph X, and the prayer of said Original Complaint, to wit:

X.

That by reason of said injuries sustained by plaintiff through said carelessness and negligence of said defendant as aforesaid, said plaintiff has been obliged to expend and has expended the sum of Seven Hundred and Fifty Dollars (\$750) for medical attendance, nurse hire and hospital care, and said plaintiff has thereby been further damaged in the additional sum of Seven Hundred and Fifty Dollars (\$750).

Wherefore, plaintiff prays judgment against said defendant for the sum of Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750), together with her costs of suit.

W. O. MORTON and
HARRY A. HOLLZER,
Attorneys for Plaintiff.

State of California,
County of Los Angeles,—ss.

Alice M. Gilliland, being duly sworn, says: That she is the plaintiff in the foregoing-entitled action; that she has read the foregoing Amendment to Complaint, and knows the contents thereof; that the same is true of her own knowledge, except as to those matters which are therein stated on her information or belief, and as to those matters, that she believes it to be true.

ALICE M. GILLILAND.

Subscribed and sworn to before me this 27th day of October, A. D. 1910.

HARRY A. HOLLZER,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. 1527. Law. In the United States Circuit Court for the Southern District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. Atchison, Topeka and Santa Fe Railroad Company, a Corp., Defendant. Amendment to Complaint. Filed Oct. 27, 1910. Wm. M. Van Dyke, Clerk. Chas. N. William, Deputy. Morton, Riddle & Hollzer, 500 Germain Building, Los Angeles, Cal., Attorneys for Plaintiff.

[Verdict.]

*In the Circuit Court of the United States, for the
Southern District of California, Southern Division.*

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
ROAD COMPANY (a Corporation),
Defendant.

We, the jury in the above-entitled cause, find in
favor of the plaintiff, in the sum of \$5000 00/100.

Los Angeles, October 27, 1910.

H. B. WOODILL,
Foreman.

[Endorsed]: No. 1527. U. S. Circuit Court, South-
ern District of California, Southern Division. Alice
M. Gilliland v. Atchison, Topeka and Santa Fe Rail-
way Co. Verdict. Filed October 27th, 1910. Wm.
M. Van Dyke, Clerk.

[**Judgment.**]

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California, Southern Division.

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corporation),
Defendant.

This cause coming on regularly for trial on the 25th day of October, 1910, being a day in the July Term, A. D. 1910, of said Circuit Court of the United States, for the Southern District of California, Southern Division, before the Court and a jury of twelve (12) men duly impaneled; W. O. Morton, Esq., and Harry A. Hollzer, Esq., appearing as counsel for plaintiff, and A. H. Van Cott, Esq., appearing as counsel for defendant, and the trial having been proceeded with on said 25th day of October, 1910, and on the following 26th and 27th days of October, 1910, and witnesses having been sworn and examined and documentary evidence having been introduced on behalf of the respective parties, and the evidence having been closed, and the cause, after argument by counsel for the respective parties and instructions of the Court, having, on the 27th

day of October, 1910, been submitted to the jury, and the jury on said 27th day of October, 1910, having rendered the following verdict: "In the Circuit Court of the United States, for the Southern District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. The Atchison, Topeka and Santa Fe Railway Company, a Corporation, Defendant. No. 1527. We, the jury in the above-entitled cause, find in favor of the plaintiff, in the sum of \$5000 00/100. Los Angeles, October 27, 1910. H. B. Woodill, Foreman"—and the Court having ordered that judgment be entered herein in accordance with said verdict in favor of the plaintiff and against the defendant in the sum of Five Thousand (5,000.00) Dollars;

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court, that Alice M. Gilliland, the plaintiff herein, have and recover of and from *The* The Atchison, Topeka and Santa Fe Railway Company, a Corporation, defendant herein, the sum of Five Thousand (5,000.00) Dollars, together with her, said plaintiff's costs and disbursements in this behalf taxed at \$108.35.

Judgment entered October 27th, 1910.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: No. 1527. U. S. Circuit Court, Ninth Circuit, Southern District of California, Southern Division. Alice M. Gilliland vs. The Atchison, To-

peka and Santa Fe Railway Company, a Corporation. Copy Judgment. Filed Oct. 27, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

[Certificate to Judgment-roll.]

In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division.

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corporation),
Defendant.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Southern District of California, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled action, and recorded in Judgment Book No. 2, of said Court, for the Southern Division, at page 103 thereof and I further certify that the foregoing papers, hereto annexed, constitute the judgment-roll in said action.

Attest my hand and the seal of said Circuit Court,
this 27th day of October, A. D. 1910.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: No. 1527. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California, Southern Division. Alice M. Gilliland vs. Atchison, Topeka and Santa Fe Railway Company, a Corporation. Judgment-roll. Filed October 27th, 1910. Wm. M. Van Dyke, Clerk. ,By Chas. N. Williams, Deputy Clerk. Recorded Judgment Register Book No. 2, page 103.

[Order Allowing Objection to Signing of Bill of Exceptions, etc.]

At a stated term, to wit, the July Term A. D. 1910, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the City of Los Angeles on Wednesday, the twenty-third day of November, in the year of our Lord one thousand nine hundred and ten, Present: The Honorable OLIN WELLBORN, District Judge.

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corporation),
Defendant.

This cause having heretofore been submitted to the Court for its consideration and decision upon defendant's application for the allowance of its bill

of exceptions and upon plaintiff's objection thereto, and the Court having duly considered the same and being fully advised in the premises, it is now by the Court ordered, that plaintiff's objection to the signing of said bill of exceptions be, and the said objections are allowed, and that the settlement of the said bill of exceptions be, and the same hereby is refused.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY,

Defendant.

Petition for a Writ of Error and Supersedeas.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, defendant in the above-entitled cause feeling itself aggrieved by the verdict of the jury and the judgment entered on the 27th day of October, 1910, comes now by E. W. Camp and A. H. Van Cott, its attorneys, and files herewith an assignment of error, and petitions said Court for an order allowing said defendant to procure a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give

and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated December 21, 1910.

E. W. CAMP,
A. H. VAN COTT,
Attorneys for Petitioner.

[Endorsed]: No. 1527. U. S. Circuit Court, Ninth Circuit, So. District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. The A. T. and S. F. Rwy. Co., a Corporation, Defendant. Petition for a Writ of Error and *Supersedeas*. Filed Dec. 22, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, Attorneys for Defendant.

*In the United States Circuit Court, Ninth Circuit,
Southern District of California, Southern Division.*

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

Assignments of Error.

Comes now the defendant, The Atchison, Topeka and Santa Fe Railway Company, and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above-entitled cause, petition for which writ of error is filed at the same time with this assignment of error.

I.

That it appears upon the face of the judgment-roll that said Court erred in entering judgment for the plaintiff therein.

II.

That it appears upon the face of the record that said Court erred in refusing to grant the defendant an extension of time for proposing and settling a bill of exceptions.

III.

That it appears upon the face of the record in said action that said Court erred in refusing to settle a bill of exceptions therein proposed by the defendant.

E. W. CAMP,

A. H. VAN COTT,

Attorneys for the Defendant.

And upon the foregoing assignment of errors and upon the record in said cause the defendant prays that said verdict and judgment be reversed.

Dated December 21, 1910.

E. W. CAMP,

A. H. VAN COTT,

Attorneys for the Defendant.

[Endorsed]: No. 1527. U. S. Circuit Court, Ninth Circuit, So. District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. The A. T. and S. F. Rwy. Co., a Corporation, Defendant. Assignment of Error. Filed Dec. 22, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, Attorneys for Defendant.

*United States Circuit Court, Ninth Circuit, Southern
District of California, Southern Division.*

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY,

Defendant.

Order Allowing Writ of Error.

Upon motion of Edgar W. Camp and A. H. Van Cott, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the verdict and judgment heretofore entered herein.

Dated Dec. 22d, 1910.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 1527. U. S. Circuit Court, Ninth Circuit, So. District of California, Southern

Division. Alice M. Gilliland, Plaintiff, vs. The A. T. and S. F. Rwy. Co., a Corporation, Defendant. Order Allowing Writ of Error. Filed Dec. 22, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, Attorneys for Defendant.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendant.

Order Staying Proceedings.

The defendant, The Atchison, Topeka and Santa Fe Railway Company, having this day filed its petition for a writ of error from the verdict and judgment made and entered herein to the United States Court of Appeals in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which the defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and said petition having this day been duly allowed:

NOW, THEREFORE, IT IS ORDERED that upon the said defendant filing with the Clerk of this Court a good and sufficient bond in the sum of Seven Thousand Five Hundred Dollars (\$7,500) to the effect that if the said defendant and plaintiff in error shall prosecute the said writ of error with effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and virtue, the said bond to be approved by the Court, that all further proceedings in this court be and they are hereby suspended and stayed until the determination of said writ of error, by said United States Circuit Court of Appeals.

Dated Dec. 22d, 1910.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 1527. U. S. Circuit Court, Ninth Circuit, So. District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. The A. T. and S. F. Rwy. Co., a Corporation, Defendant. Order Staying Proceedings. Filed Dec. 22, 1910. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, Attorneys for Defendant.

United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division.

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Defendant.

Bond.

Know All Men by These Presents:

That we, The Atchison, Topeka and Santa Fe Railway Company, a corporation, as principal, and A. P. Maginnis and J. C. Drake as sureties, are held and firmly bound unto Alice M. Gilliland, the plaintiff above named, in the sum of Seven Thousand Five Hundred (\$7,500) Dollars, to be paid to Alice M. Gilliland, to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 21st day of December, A. D. 1910.

Whereas, the above-named defendant, The Atchison, Topeka and Santa Fe Railway Company, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled cause by the Circuit Court of the United States for the Southern District of California, Southern Division, rendered and en-

tered in said cause on the 27th day of October, 1910.

Now, therefore, the condition of this obligation is such that if the above-named The Atchison, Topeka and Santa Fe Railway Company shall prosecute said writ to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY,

By A. G. WELLS,

Its General Manager.

[Seal] Attest: G. HOLTERHOFF,

Its Western Assistant Secretary.

A. P. MAGINNIS.

J. C. DRAKE.

State of California,

County of Los Angeles,—ss.

A. P. Maginnis and J. C. Drake, the sureties named in and who executed the foregoing bond, being first duly sworn, each for himself, deposes and says:

That he is a resident and freeholder within the said County of Los Angeles, and is worth the sum specified in said bond as the penalty thereof, to wit, the sum of Seven Thousand Five Hundred Dollars (\$7,500), over and above all his just debts and liabilities, in property situated in said county exempt from execution.

A. P. MAGINNIS.

J. C. DRAKE.

Subscribed and sworn to before me this 21st day of December, A. D. 1910.

[Seal] J. L. B. HAMILTON,
Notary Public in and for the County of Los Angeles,
State of California.

The foregoing bond is hereby approved.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 1527. Circuit Court, Ninth Circuit, So. District of California, Southern Division. Alice M. Gilliland, Plaintiff, vs. The A. T. and S. F. Rwy. Co., a Corporation, Defendant. Bond. Filed Dec. 22, 1910. Wm. M. Van Dyke Clerk. By Chas. N. Williams, Deputy Clerk. E. W. Camp, A. H. Van Cott, Attorneys for Defendant.

[Certificate of Clerk U. S. District Court to Record.]

*In the Circuit Court of the United States of America,
of the Ninth Judicial Circuit, in and for the
Southern District of California, Southern Division.*

No. 1527.

ALICE M. GILLILAND,

Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

Defendant.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial

Circuit, in and for the Southern District of California, do hereby certify the foregoing thirty-two (32) typewritten pages, numbered from 1 to 32 inclusive, and comprised in one volume, to be a full, true and correct copy of the pleadings and of all papers and proceedings upon which the judgment in favor of the defendant was made and entered in said cause, and also of the assignment of errors, petition for and order allowing the writ of error and bond on writ of error in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

I do further certify that the cost of the foregoing record is \$22 65/100, the amount whereof has been paid to me by The Atchison, Topeka and Santa Fe Railway Company, the plaintiff in error in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, this 18th day of January, in the year of our Lord, one thousand nine hundred and eleven and of our Independence the one hundred and thirty-fifth.

[Seal] WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of
America, of the Ninth Judicial Circuit, in and
for the Southern District of California.

[Order Enlarging Time to Docket Cause.]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (a Corporation),
Plaintiff in Error,

vs.

ALICE M. GILLILAND,

Defendant in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiff in error to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be, and the same hereby is, enlarged and extended to and including the 20th day of February, 1911.

Dated at Los Angeles, California, January 18th, 1911.

OLIN WELLBORN,
United States District Judge, Southern District of
California.

[Endorsed]: No. 1945. United States Circuit
Court of Appeals, for the Ninth Circuit.
The Atchison, Topeka and Santa Fe Railway Com-
pany, a Corporation, Plaintiff in Error, vs. Alice M.
Gilliland, Defendant in Error. Order Extending
Time to File Record. Filed Jan. 20, 1911. F. D.
Monckton, Clerk.

[Endorsed]: No. 1945. United States Circuit Court of Appeals for the Ninth Circuit. The Atchison, Topeka and Santa Fe Railway Company (a Corporation), Plaintiff in Error, vs. Alice M. Gilliland, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the Southern District of California, Southern Division.

Filed January 19, 1911.

F. D. MONCKTON,
Clerk.

